

No. _____

In the Court of Criminal Appeals at Austin

FILED
COURT OF CRIMINAL APPEALS
8/12/2020
DEANA WILLIAMSON, CLERK

Nos. 01-20-00004-CR & No. 01-20-00005-CR
In the Court of Appeals for the
First District of Texas at Houston

Ex parte

JOSEPH ERIC GOMEZ,
Appellant

On Appeal from Trial Court Case No. 1657519 and 1657521
Before the 338th Judicial District Court of Harris County, Texas

**APPELLANT'S RESPONSE TO THE STATE'S MOTION TO
RECALL INTERMEDIATE COURT'S MANDATES PURSUANT
TO RULE 31.4**

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

JOSEPH ERIC GOMEZ, Appellant before the Court of Appeals for the First District of Texas at Houston on a pretrial application for writ of habeas corpus filed in the trial court, by and through undersigned counsel, submits the following response in opposition to the State's Mo-

tion to Recall Intermediate Court's Mandates Pursuant to Rule 31.4 filed today, August 12, 2020, in this Court.

Procedural History

1. Appellant filed an applications for writ of habeas corpus in the trial court after the trial revoked the bonds posted by Applicant in the total amount of \$40,000 (amounts set by the magistrate at a hearing held pursuant to Article 15.17, Texas Code of Criminal Procedure) and raised the bond amounts to a total of \$150,000.¹ The trial court denied the applications and Appellant appealed the judgments to the Court of Appeals for the First District of Texas at Houston.
2. On August 7, 2020, the Court of Appeals for the First District of Texas at Houston issued its decision in the appeal, finding that the trial court abused its discretion, reversed the judgment denying the writ, ordered that the original \$40,000 bonds be reinstat-

¹ While there was a video recording of the hearing before the magistrate admitted and made part of the appellate record, there was no record of this proceeding before the trial court where Appellant was not represented by counsel of his choosing. *See Gomez v. State*, Nos. Nos. 01-20-00004-CR & No. 01-20-00005-CR, slip op. at 3 n.2, 4–5 (Tex. App.—Houston [1st Dist.] August 7, 2020, pet. filed)(mem. op., not designated for publication).

ed, and ordered the mandate to take effect immediately. The Harris County District Clerk, following the instructions of the mandate, reinstated Appellant's bond and he was released from custody the following day.

3. The State filed several motions, both in this Court and before the Court of Appeals, attempting to stay the mandate. This morning the Court of Appeals denied the State's Motion to Stay Mandate Pursuant to Rule 31.4 and dismissed all other motions. This Court likewise rejected the State's previously filed motion without prejudice.
4. Following the procedure set out in Rule 31.4(c) of the Texas Rules of Appellate Procedure, the State presented its motion to stay mandate and appendix (petition for discretionary review) to the Clerk of this Court today.

The Motion for Stay Should Be Denied

5. There is no compelling reason for the Court of Appeals' mandate to be stayed pending review of the State's Petition for Discretionary Review by this Court. Since his release, Appellant is subject to \$40,000 in bonds and is complying with all conditions of his re-

lease set by the trial court including not to have any contact with the complaining witness (a condition that Appellant has complied with since it was first ordered back in November 2019).

6. It cannot be overlooked that this is an appeal from a *pretrial* application for writ of habeas corpus. Appellant has not been convicted of a crime and is presumed innocent of the allegations against him. This should be contrasted against another case currently pending before this Court on discretionary review: *Nathan Ray Foreman v. State of Texas*, Nos. PD-1090-18 & PD-1091-18. In that case, Appellant was convicted in the trial court of aggravated robbery and aggravated kidnapping and appealed the judgment to the Court of Appeals for the Fourteenth District of Texas at Houston. *See Foreman v. State*, 561 S.W.3d 218, 245 (Tex. App.—Houston [14th Dist.] 2018, pet. granted). After the Court of Appeals reversed the judgment, the court considered the appellant’s request to set bond pursuant to Article 44.04(h), granted that request, and set bond at \$50,000 in each case. *See Foreman v. State*, __ S.W.3d __, No. 14-15-01005-CR & 14-15-01006-CR (Tex. App.—Houston [14th Dist.] October 10, 2018)(per curiam order). The ap-

pellant there has been out of custody since posting those \$50,000 bonds and has remained free while this Court considers his case on discretionary review. Appellant's case here is much different as he has not yet been convicted and has otherwise complied with all conditions of his bond including appearing without counsel before the trial court within hours of his initial release from custody on the original \$40,000 bonds. See *Gomez*, slip op. at 4–5.

7. While the State's motion sets out that it has followed the procedure set out by Rule 31.4(c), it has given no reasons in its motion as to *why* this Court should stay the mandate. That is because there is none.

WHEREFORE, PREMISES CONSIDERED, Appellant respectfully requests this Court deny the State's Motion to Recall Intermediate Court's Mandates Pursuant to Rule 31.4 and consider the State's Petition for Discretionary Review in the ordinary matter set out by Rule 68, Texas Rules of Appellate Procedure.

Respectfully Submitted,

MAYR LAW, P.C.

by: /s/ T. Brent Mayr

T. Brent Mayr

SBN 24037052
bmayr@mayr-law.com

by: /s/ Sierra Tabone
Sierra Tabone
SBN 24095963
stabone@mayr-law.com

5300 Memorial Dr., Suite 750
Houston, TX 77007
713.808.9613
713.808.9991 FAX

SCHNEIDER & MCKINNEY, PLLC

by: /s/ Stanley G. Schneider
Stanley G. Schneider
SBN 17790500
440 Louisiana, Suite 800
Houston, TX 77002
713-951-9994
713-224-6008 FAX
stans3112@aol.com

ATTORNEYS FOR
JOSEPH ERIC GOMEZ

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing instrument has been served on to the attorney for the State, Clint Morgan, Harris County District Attorney's Office, pursuant to Texas Rule of Appellate Proce-

dure 9.5 (b)(1), through Appellant's counsel's electronic filing manager on August 12, 2020.

/s/ T. Brent Mayr

T. Brent Mayr
ATTORNEY FOR
JOSEPH ERIC GOMEZ

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Thomas Mayr
Bar No. 24037052
bmayr@mayr-law.com
Envelope ID: 45316007
Status as of 08/12/2020 12:59:28 PM -05:00

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Clinton Morgan	24071454	morgan_clinton@dao.hctx.net	8/12/2020 12:30:07 PM	SENT